

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLEE**





*Orig. with Affidavit of  
Mailing*

**74-1414**

*To be argued by*  
GARY A. WOODFIELD

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**United States Court of Appeals**

**FOR THE SECOND CIRCUIT**

**Docket No. 74-1414**

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UNITED STATES OF AMERICA,

*Appellee,*

*—against—*

SPENCER THOMAS CHIN,

*Appellant.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

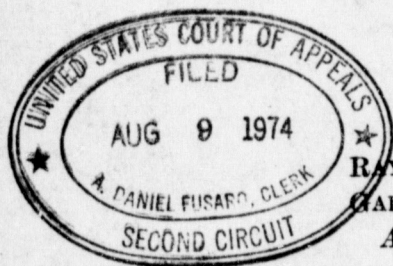
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**BRIEF FOR THE APPELLEE**

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PRELIMINARY STATEMENT

This is an appeal from a judgment of conviction entered in the United States District Court for the Eastern District of New York (Mishler, Ch. J.) on March 29, 1974 following Spencer Thomas Chin's plea of guilty to aggravated bank robbery.

Appellant was charged in a three count indictment with armed bank robbery (18 U.S.C. §2113(a) and §2), bank larceny (18 U.S.C. §2113(b) and §2) and aggravated bank robbery (18 U.S.C. §2113(d) and §2).

On January 15, 1974, appellant pled guilty to aggravated bank robbery at the conclusion of the Government's direct case. On March 29, 1974 appellant was sentenced to a term of fifteen years imprisonment. At the time of sentencing, appellant's motions for an adjournment of the sentencing and withdrawal of his guilty plea were denied. Appellant is now serving his sentence.

On appeal, appellant contends that he was denied his Sixth Amendment right to counsel because of Chief Judge Mishler's refusal to adjourn his sentencing to permit him to consult with certain legal "advisors" and to review certain unidentified papers prior to sentencing. Appellant further claims that his right to effective counsel was denied because of defense counsel's limited cross-examination of a Government witness who testified during a pre-trial

hearing to determine the admissibility of appellant's confession\*.

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\* Pursuant to a motion of The Legal Aid Society, dated June 20, 1974, this Court relieved The Legal Aid Society as counsel for the appellant on appeal and assigned new counsel. Thereafter, a supplemental brief was filed for appellant on August 2, 1974. To permit filing of the Government's brief as scheduled on August 9, 1974, this brief was prepared and filed in typewritten form.



STATEMENT OF THE CASE

(1)

On August 15, 1973, the Manufacturers Hanover Trust Company Bank, 1205 Fulton Street, Brooklyn, New York was robbed of \$6,025 by three armed men. At approximately 11:00 A.M. that morning, Mrs. Rose Pass, a teller, observed an individual armed with a shotgun leap over the teller's counter and scoop up money from the tellers' drawers, pushing it out through the teller's cage to appellant Chin (29, 32, 33). Meanwhile, Charles Wynter, a bank guard, was working on a lower level in the bank. Hearing the robbery in progress, Wynter ascended the stairs with his gun drawn. As he neared the top of the stairway, Wynter saw William Bennett holding bank personnel and customers at bay with a drawn weapon, while appellant Chin was scooping money at the tellers' cage (39, 40, 41). Wynter ordered Bennett to drop his gun. Bennett whirled and fired four or five times at the guard. Mr. Wynter then returned the fire, killing Bennett (39, 40).

As these shots were exchanged, appellant retreated to the rear of the bank where he hid under an employee's desk. The third robber, who was unidentified, successfully escaped by crashing through a bank window. Moments later, Police officers arrived in response to the

bank's silent alarm. The bank employees directed the officers to appellant's hiding place where he was arrested. An immediate search of appellant revealed \$3,550 in cash and bait money (66, 67, 81-83).

(2)

Appellant was indicted on August 23, 1973 and trial was set for November 27, 1973, but was adjourned to January 14, 1974 upon appellant's request. Three days before trial was scheduled to begin, appellant offered to plead guilty, but because of his failure to admit that money was taken during the robbery, Chief Judge Mishler would not accept the plea.

Prior to the commencement of trial on January 15, 1974, a hearing was held to determine the voluntariness of appellant's confession given at the time of his arrest. At the hearing, Special Agent Francis Doyle testified that when appellant was taken into the custody of the FBI he was advised of his rights from an advice of rights form. Appellant assured Doyle that he fully understood his rights (10). Thereafter, appellant was transported to the FBI headquarters in Manhattan, and again, fully advised of his rights before a formal interview commenced (11). Appellant was read a form entitled "Interrogation Advice of Rights" which was then presented to him. After reading it aloud, appellant indicated that he fully understood the form and



was familiar with his rights. He then signed the section of this form entitled "Waiver of Rights" (12, 13). Subsequently, appellant fully discussed with the agents his role in the bank robbery.

Appellant's trial counsel cross examined Agent Doyle concerning the presence of other agents at the time of the confession and the preparation of a report of the interview. Appellant's counsel also asked Agent Doyle whether any threats or promises had been made to induce appellant to sign the waiver of rights form (13-15).

Chief Judge Mishler found that appellant was properly advised of his Miranda rights and that he knowingly and voluntarily waived those rights and that his confession was therefore admissible (20).

Thereafter, the trial commenced. During the Government's direct case, appellant again indicated his desire to plead guilty to the aggravated bank robbery count (Count Three) (90). Chief Judge Mishler, noting the appellant's prior attempt to enter a plea of guilty, conditioned his acceptance of the plea upon the completion of the Government's case and the sworn statement of the appellant concerning his participation in the robbery. (90).

At the conclusion of the direct case, appellant took the stand and explained his participation in the robbery. Chief Judge Mishler advised appellant of the

nature of the charge against him and the consequence of his plea. Finding a factual basis for the plea, the District Court accepted the plea of guilty to bank robbery (119).

(3)

At the sentencing proceeding on March 29, 1974, appellant requested an adjournment because he claimed certain papers which would assist him in his presentation had not been available since the time of his involvement in the disturbance at Federal House of Detention at West Street on March 21, 1974.\* Appellant refused to give any further information regarding the contents of these papers or how they would aid him in his comments to Chief Judge Mishler (S. 3-4, 6).\*\*

Appellant also requested an adjournment so that he might have time to confer with those assisting in his "legal defense" (S. 13). Appellant told Judge Mishner that Pat Dougal, an Assistant Administrator at the Cumberland Hospital, Washington, D.C. was assisting in his "legal defense." However, appellant refused to further elaborate upon questioning from Chief Judge Mishler (S. 13). This

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\* On March 21, 1974, appellant, with two other convicted bank robbers who were also awaiting sentence at the Federal Detention Headquarters, West Street, Manhattan, disarmed, and held hostage four prison guards for approximately twelve hours. The hostages were released and the three inmates surrendered after the United States Attorney for the Southern District of New York agreed not to prosecute them for any crime stemming from this attempted escape. New York Times, March 22, 1974, at 1, col. 1, March 23, 1974, at 1, col. 1.

\*\* Numerals in parentheses preceded by "S" are references to appellant's sentencing on March 29, 1974.



request for an adjournment was denied. Chief Judge Mishler noted appellant's attempted escape at West Street as a factor in promptly sentencing appellant (S. 16, 17).

Appellant then requested an opportunity to personally review the presentence report. Chief Judge Mishler granted appellant a recess of 40 minutes to examine the report, even though appellant's counsel had previously reviewed the report. Also, appellant was allowed to make a telephone call during this recess (S. 18). This call was interrupted by U. S. Marshals after approximately ten minutes when appellant began making threats against Chief Judge Mishler (S. 19, 20).

After the forty-minute recess and a brief colloquy with Chief Judge Mishler concerning the accuracy of the pre sentence report, appellant made one last effort to delay his sentencing. He simply attempted to walk out of the courtroom. This failing, he then desperately demanded new counsel. This request was likewise denied (24).

In imposing a fifteen year term of imprisonment, Chief Judge Mishler specifically disregarded the appellant's participation in the West Street disturbance (S. 32).

ARGUMENTPOINT ITHE DISTRICT COURT PROPERLY DENIED  
APPELLANT'S REQUEST TO ADJOURN THE  
SENTENCING

The unusually lengthy transcript of the sentencing proceeding of March 29, 1974 before Chief Judge Mishler (submitted as an Appellee's Appendix) reveals a series of desperate attempts by appellant Chin to postpone his day of reckoning. The first such instance, in part the basis of this appeal, occurred immediately after the sentencing hearing began. Defense counsel, acting at the specific request of appellant Chin, requested an adjournment of the sentencing because appellant was without certain personal papers which appellant claimed would aid him in his remarks to Judge Mishler. Appellant himself explained that as a result of his attempted escape from the West Street detention facility, he was segregated from other inmates and during the transfer lost certain papers (S. 3-4). Chief Judge Mishler then inquired (S. 4):

THE COURT: What papers were they,  
and how can they help you in the  
sentencing?

THE DEFENDANT CHIN: I prefer not to  
go into that right now.

Appellant further suggested that an adjournment would permit him to telephone certain people who had apparently at one time rendered him legal assistance. Ap-



pellant characteristically would not identify these people or elaborate as to what assistance they had rendered him because he claimed "It would be very foolish for me to state anything, because I may jeopardize my own position" (S. 13).

Appellant did mention the name "Pat Dougal" but he advised Judge Mishler that this individual was not an attorney but instead a hospital official.

Judge Mishler denied the application for an adjournment whereupon appellant immediately moved to withdraw his plea of guilty. This application was likewise denied. Chief Judge Mishler noted that appellant had pled guilty approximately 2 1/2 months prior to the sentencing date. He further assured appellant and defense counsel that while he was not considering appellant's escape attempt in weighing sentence, he did consider this activity in denying the application for an adjournment. Judge Mishler quite properly concluded that because of the desperate escape attempt of appellant Chin and others, appellant was to be considered a risk who should be sentenced as quickly as possible and removed from the West Street facility.

Having denied appellant's application for an adjournment of the sentence, Chief Judge Mishler permitted

appellant the opportunity to make telephone calls in the event that he might secure any information that may assist him in his remarks to the Court prior to sentence. Chief Judge Mishler also granted appellant's request to personally review the pre-sentence report. Accordingly, a forty-minute recess was taken during which time appellant reviewed the report and made a telephone call under the supervision of the United States Marshal. After ten minutes, this telephone call was interrupted by the Marshal when appellant began making threats against Judge Mishler.

At the conclusion of this recess, Judge Mishler discussed with appellant and counsel certain claimed inaccuracies in the pre-sentence report. After this was accomplished and immediately before sentence was to be imposed, appellant made one last attempt to disrupt the sentencing. Despite the fact that appellant had been represented from the day of his arrest by appointed counsel, about whom appellant never voiced any objection, appellant Chin suddenly accused Chief Judge Mishler of depriving him of counsel of his own choice (S. 22). His application to adjourn sentencing on this ground was of course similarly denied.

Chief Judge Mishler's patient and thorough review of appellant's claims belies any argument that he



acted unreasonably in denying the litany of applications for adjournment. The sentencing transcript reveals that Chief Judge Mishler's paramount interest was the prompt disposition of the case which interest was undoubtedly magnified by the desire to remove Chin from the West Street facility following his aborted escape attempt. It is obvious that appellant's requests for adjournment were designed to serve no purpose other than delay the sentencing and obstruct the normal processes of the Court. Chief Judge Mishler properly resisted appellant's efforts in this regard. See United States v. Maxey, \_\_\_\_\_ F.2d \_\_\_\_\_ (2d Cir.), slip op. 758, decided May 28, 1974; United States v. DiStefano, 464 F.2d 845 (2d Cir. 1972). It is not at all surprising to note that despite appellant's claims that his legal papers and legal advisors would have significantly aided him at the day of sentencing, no further evidence has since been presented to the District Court by appellant or his counsel in an effort to reduce the sentence imposed.

Appellant's requests for adjournment of the sentencing were properly denied.

POINT II

APPELLANT WAS NOT DEPRIVED  
OF THE EFFECTIVE ASSISTANCE  
OF COUNSEL

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In appellant's second and final point on appeal, he contends that his Sixth Amendment right to counsel was denied as a result of the ineffective performance of his trial attorney. He attacks the performance of defense counsel during the cross-examination of Agent Doyle at the pre-trial suppression hearing. Insisting that the cross-examination should have been more thorough, appellant appears to argue that the confession would not have been admitted into evidence if the cross-examination of Agent Doyle had in fact been more searching. On appeal, appellant offers a variety of questions that counsel might have asked Agent Doyle but, understandably, he fails to demonstrate on what basis his motion to suppress the confession could have been granted. In fact, it is quite obvious that the Government's proof of voluntariness was in no way vulnerable to attack during cross-examination. Indeed, the evidence of voluntariness was significant. After having been caught in the act of robbing the bank, appellant was advised several times of his Miranda rights and at one point prior to the interview, he himself read the rights and acknowledged that he did indeed understand them. He then executed a written waiver of these rights.



Only after this was accomplished did the interview commence. Having been caught in the act, it was of course not surprising that appellant admitted in detail his participation in the bank robbery.

Appellant fails to demonstrate how his confession could have been suppressed by any line of inquiry during the cross-examination. He also fails to note that aside from the confession, the evidence of his participation was truly overwhelming. Moments after the robbery the police were directed to the rear of the bank by witnesses of the crime where appellant was discovered hiding under an employee's desk. As would be expected, appellant was discovered to have in excess of \$3,000 in his possession at that time, including a quantity of bait money taken during the robbery just minutes earlier.

In the face of this evidence appellant's claim of ineffective counsel is indeed frivolous. In no way has appellant succeeded in meeting the standard established by this Court and recently reaffirmed in United States v. Yanishefsky, \_\_\_\_ F.2d \_\_\_\_ (2d Cir.), slip op. 5047, 5057, decided July 30, 1974. The test of effective assistance of counsel was first set out by this Court in United States v. Wight, 176 F.2d 376, 379 (2d Cir. 1949), cert. denied, 388 U.S. 950 (1950):

The proof of the efficiency of such assistance lies in the character of the resultant proceedings, and unless the purported representation by counsel was such as to make the trial a farce and a mockery of justice, mere allegations of incompetency or inefficiency of counsel will not ordinarily suffice. . . .

A lack of effective assistance of counsel must be of such a kind as to shock the conscience of the Court and make the proceedings a farce and mockery of justice.

Defense counsel's cross-examination in no way approached this standard. Appellant's counsel cross-examined Agent Doyle concerning the presence of other agents at the time of the confession, the preparation of the FBI summary of the interview as well as the crucial questions as to whether any threats or promises were made to appellant to induce his waiver and confession (14, 15). The evidence overwhelmingly shows that appellant's waiver was freely and voluntarily given and, of course, his confession was properly admitted. Appellant's claim of ineffective counsel must be discarded. See also, United States ex rel. Marcelins v. Mancusi, 462 F.2d 36 (2d Cir. 1972) and United States v. Currier, 405 F.2d 1039 (2d Cir.), cert. denied, 395 U.S. 914 (1969).



CONCLUSION

The judgment of conviction should be affirmed.

Respectfully submitted,

August 9, 1974

DAVID G. TRAGER,  
United States Attorney,  
Eastern District of New York.

RAYMOND J. DEARIE,  
GARY A. WOODFIELD,  
Assistant United States Attorneys,  
Of Counsel.

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

- - - - - X

UNITED STATES OF AMERICA,

Appellee,

- against -

Docket No. 74-1414

SPENCER THOMAS CHIN,

Appellant.

- - - - - X

APPELLEE'S INDEX

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

:

-against-

:

73-CR-779

SPENCER THOMAS CHIN,

:

Defendant.

:

-----X

Brooklyn, New York  
March 29, 1974

B e f o r e:

HONORABLE JACOB MISHLER, CHIEF U.S.D.J.

EMANUEL KARR  
OFFICIAL COURT REPORTER



APPEARANCES:

EDWARD J. BOYD, V., ESQ.,  
United States Attorney for the  
Eastern District of New York

BY: GARY WOODFIELD, ESQ.,  
Assistant United States Attorney.

SIMON CHREIN, ESQ.,  
Legal Aid Society,

Attorney for Defendant.

. . . . .

THE CLERK: United States of America versus Spencer Thomas Chin, sentence.

MR. CHREIN: Your Honor, I have been requested by the defendant to ask for an adjournment of the sentencing this morning.

THE COURT: For what reason?

MR. CHREIN: The defendant has indicated that certain papers of his that he would need are not present, and they would be of assistance to him in preparing his presentation today on sentencing.

THE COURT: What certain papers?

MR. CHREIN: He told me he would rather tell that to the Court himself.

THE COURT: All right, tell me.

~~THE DEFENDANT CHIN:~~ After that incident, after last Thursday and Friday at West Street, which I was involved in, I was taken to segregation in a cell location, and what have you, and I immediately requested of the officer of the day to bring down my papers, and this went from Saturday to Sunday, from Sunday to Monday. Also officers went up and asked the people in my cell, in the tank, what happened to my papers, and they put them



up and put them in a box, and I asked them to look into the closet, and he said they weren't there, he said, "Well, perhaps the FBI have them."

THE COURT: What papers are you talking about that would help you on sentence?

THE DEFENDANT CHIN: It was several papers, people that I had in the law profession were answering specific questions of mine as to the case in general, and I was going on advice and everything, and they for the time being, was tied up in other cases.

THE COURT: Specifically, what papers, you tell me, were taken from you, that would help you on the sentence?

THE DEFENDANT CHIN: It wasn't taken from me, it never left there, it was left up in the box.

THE COURT: What papers were they, and how can they help you in the sentencing?

THE DEFENDANT CHIN: I prefer not to go into that right now.

If the Court wish, it could read this letter, from a person who was acting as my lawyer, it's a legal assistance letter, from a lawyer down in D.C., on a case now in the Supreme Court.

THE COURT: Do you have the letter?

THE DEFENDANT: Yes, I do.

THE COURT: Mark it, please.

THE DEFENDANT CHIN: Plus I wasn't allowed any telephone calls until last night, which, you know, I requested I might be allowed to call specific people.

THE CLERK: Defendant's Exhibit A for identification.

(Document handed to the Court).

THE COURT: Have you seen this?

MR. CHREIN: No, your Honor, he indicated that he wanted to show it to the Court directly.

THE COURT: This letter is dated last Sunday, March 24th.

THE DEFENDANT CHIN: The letter also stresses, and this was done before I read the letter from the Legal Aid Assistance, that I was to come to Court, which is Friday, for sentence, because Marion Seltzer couldn't be located during this time.

THE COURT: I will ask my Courtroom Deputy to Xerox a copy of this letter, and give you your letter back.



If you have any concern lest your activities of March 21 to 22nd, influenced me in the sentencing, I assure you that it has nothing whatsoever to do with the sentencing.

I don't know what authority the United States Attorney for the Southern District had, to grant immunity, but that is another question.

That letter has nothing whatever to do with the sentencing here. You are being charged with bank robbery, and that is all I am sentencing you for.

THE DEFENDANT CHIN: See, well --

THE COURT: You tell me what other documents you say are somewhere at West Street, or any place else, that would help you in the sentencing procedure here today?

THE DEFENDANT CHIN: Like I said before, specific, I do think all along I have people, experts, give me advice --

THE COURT: You say there are papers or documents?

THE DEFENDANT CHIN: Right.

At this time also, you must remember this is an adversary system in law, so that it would be



foolish to expose any of the strategies and tactics, but they told me to go ahead with the sentencing -- I mean with the trial, and find out more or less what the Government had against me, because -- besides my oral statement -- and when you discover, you then take the plea, and that is what I did.

(Continued on next page.)

THE COURT: I don't know that I got that.

One moment.

Can you read that back?

(Record read).

THE COURT: What do you mean by going ahead with the trial? In what case?

In this case?

THE DEFENDANT CHIN: Right.

THE COURT: Well, you pleaded guilty, didn't you?

THE DEFENDANT CHIN: After the prosecution witnesses had testified. After they had testified.

THE COURT: Well, in this case, I think I went into more extensive --

THE DEFENDANT CHIN: I understand that.

THE COURT: (Continuing) --search for your voluntariness than I have ever gone before in any other -- in any case.

THE DEFENDANT CHIN: This is understood.

THE COURT: And in this case, I believe I did have a Government witness testify. It was almost a trial. And I think you made a statement or you testified, didn't you, and you told me of your participation; isn't that true?

THE DEFENDANT CHIN: I was put up on the stand to -- I believe you gave me the impression that you thought I was trying to pull some type of trick for a mistrial or something like that, so you questioned me very thoroughly on the points, on specific points.

THE COURT: I find difficulty understanding what the defendant is saying. Would you please repeat it once more?

(Last statement of defendant read.)

MR. WOODFIELD: Your Honor, excuse me, if I might add, if you recall --

MR. CHREIN: I believe a mistrial was granted on count one, too.

THE COURT: On count one?

MR. CHREIN: On count one.

MR. WOODFIELD: May I inform the Court of my recollection of what happened?

THE COURT: Do we have a transcript of what happened?

MR. WOODFIELD: No, we don't, your Honor. The Government put in its entire case, and then the Government rested.

THE COURT: Was the jury chosen?



MR. WOODFIELD: Yes, a jury was chosen, and the Government submitted its entire direct case. Then at the end of the Government's direct case, Mr. Chin indicated he would plead at that time. You indicated you would not accept his plea unless he took the stand and informed you of exactly what his role was in the bank robbery.

He did that. We had approximately a five or ten minute discussion between you and Mr. Chin, and then, at that time, you accepted his plea.

THE COURT: I recall it now, because --

THE DEFENDANT CHIN: That's exactly more or less the same --

THE COURT: --Mr. Chin, you first said that you weren't sure whether you committed the offense, because you didn't actually have the money in hand.

MR. WOODFIELD: That's correct.

THE COURT: And then your testimony was that the third man, whom you couldn't identify, was handing you the money from over the counter, and you took it.

And then after your accomplice was shot and killed, you ran into the back. You hid behind a desk and you found a woman there, and you attempted to take her hostage -- I don't know whether you admitted

that, but she said you did -- but she finally freed herself, and when the other police came in, you surrendered, and said something like "Don't shoot."

So that's my own recollection of your testimony. I don't know how accurate it is, but I think it's pretty good. You recalled what had happened.

Now, what do you say you want to -- You want a trial, is that what you are saying?

THE DEFENDANT CHIN: In other words, I am not -- I'd be foolish to say anything at this time, but I do want, like I said before, the whole thing is with myself at this time, because these lawyers was tied down from the very beginning, and they said what you do, they told me to concentrate on--

THE COURT: Excuse me one moment. Do you hear?

THE DEFENDANT CHIN: You've got to understand that I've been under a lot of pressure over there at West Street anyway.

THE COURT: But I am trying to hear you. Maybe it's just myself, I don't know. Maybe it's just me.



Read -- read that back.

(Defendant's last statement read.)

THE DEFENDANT CHIN: In reference to my whole entire case, from the very beginning, you remember I had given the Court a letter stating I had needed time to get my case together, but on the other hand, I was concentrating on my mother -- change that statement: On the mother of my children and the problems they were going through, and this is what they more or less told me to do, to concentrate on that there, because these lawyers are really tied down.

Now, they also explained to me --

THE COURT: What do you mean tied down, physically?

THE DEFENDANT CHIN: Having case loads.

THE COURT: The lawyers are tied down?

THE DEFENDANT CHIN: Right.

THE COURT: Where are they tied down?

THE DEFENDANT CHIN: The one right now?  
D.C.

THE COURT: Is that Mr. Weintraub?

THE DEFENDANT CHIN: No, no, no, no, no.

THE COURT: Who is the lawyer that's tied

down in Washington?

THE DEFENDANT CHIN: What you have to do, you have to call the Cumberland Hospital and ask for Mr. Pat Dougal. He's assistant administrator there, and he can give you a better explanation pertaining, you know, to my legal, you know, assistance and what have you.

THE COURT: But what are you asking for now? Are you asking for a new trial? Are you asking to withdraw all your pleas?

THE DEFENDANT CHIN: You see, like I said before, at this point, man, it would be very foolish for me to state anything, because I may jeopardize my own position. But if possible, I would like an adjournment, let's say to next Thursday, and within that time, perhaps they would give us back the telephones, and I could make calls myself, and explain the situation, if the Court could --

THE COURT: What do you intend -- whom do you intend to talk to?

THE DEFENDANT CHIN: People who -- the main person would be Mr. Dougal and also I have to speak --

THE COURT: Mr. --

THE DEFENDANT CHIN: Dougal.



THE COURT: How do you spell that?

THE DEFENDANT CHIN: D-O-U-G-A-L.

THE COURT: Is he a lawyer?

THE DEFENDANT CHIN: He's one of my very close associates. No, he's Assistant Administrator at Cumberland Hospital.

THE COURT: And what are you going to ask him about?

THE DEFENDANT CHIN: Well, he's the one who is dealing with my legal defense with the lawyers, and what have you, because they are working --

THE COURT: Do you care to tell me what "my legal defense" is?

THE DEFENDANT CHIN: That would be foolish for me to expose that.

THE COURT: How can I rule on any application unless you tell me the basis for it?

THE DEFENDANT CHIN: See, like I said before, like the whole circumstances I was under, from the very beginning, I was more so worried about my family than about this case. So more or less, they just told me what to do at a specific point. Previous to this I didn't question it, because I put a certain amount of trust and confidence in their hands, in



their judgment.

THE COURT: I see.

THE DEFENDANT CHIN: So this is the things they told me to do. Like I say before, they said this is an adversary system, so I guess they just apply military strategies and tactics to it..

THE COURT: I see. Well, the application to adjourn the sentencing is denied. I am returning the envelope and the letter from Miss or Mrs. Burns, and I will ask the Clerk to mark a copy of the letter Defendant's Exhibit A.

THE CLERK: So marked.

THE COURT: Let the record show I am returning both the letter and the envelope.

THE DEFENDANT CHIN: At this time, I would like to withdraw my plea.

THE COURT: On what ground?

THE DEFENDANT CHIN: Well, see, if I can't speak to my lawyers and what have you, I feel that already, man, because I wasn't able to have the legal advice that I chose to have --

MR. CHREIN: Your Honor, may I make one interruption and possibly a suggestion. The defendant is speaking in terms of lawyers, who I

take it are other than the lawyers who represented him in connection with this case.

THE DEFENDANT CHIN: No, they are not Legal Aid Society and what have you.

MR. CHREIN: No, I understand.

If the defendant were allowed a certain amount of phone calls, and if this matter could be adjourned, perhaps he would be able to contact other counsel, who could make these applications in a more articulate fashion. I would therefore, suggest respectfully that the Court adjourn the sentence, allow the defendant to communicate with the lawyers he speaks of and perhaps one of them might appear at the adjourned sentencing date.

THE COURT: I won't allow it. This defendant pleaded guilty after the Government's case was in on January 15, 1974. Our hope is that defendants be sentence within a much shorter time, two or three weeks. The only reason that hasn't happened, is because our Probation Department is so busy, that it takes this long to get a pre-sentence report.

Now, I am not taking this defendant's activities into consideration in imposing sentence, but in



the application for an adjournment, I most certainly am. This defendant is definitely a risk.

THE DEFENDANT: Well, how could you --

THE COURT: And the application to adjourn the sentencing is denied.

The motion to withdraw the plea of guilty is denied.

Spencer Thomas Chin, also known as Antar Bey, do you have anything to say before the Court imposes sentence on you?

THE DEFENDANT CHIN: I'd like to see the Probation Report, if I may, if I am allowed that.

THE COURT: I thought you already saw the Probation Report.

MR. CHREIN: No. I saw the Probation Report myself.

THE COURT: Do we have a copy?

PROBATION OFFICER: Yes, I do, your Honor.

MR. CHREIN: Could the defendant be allowed time to read it himself?

THE COURT: Oh, surely.

THE DEFENDANT CHIN: Could I make a telephone call, if possible, because I have not been able to



make one.

THE COURT: Will you give the defendant the opportunity to make a telephone call?

THE MARSHALL: Absolutely, your Honor.

THE COURT: Here is a twelve page report -- eleven and a half. As soon as you are through, let me know. But you certainly should be ready within a half hour. All right.

(Recess had.)

MR. CHREIN: Your Honor, I have spoken to Mr. Chin since his return to the courtroom. He advises me that he had made contact with the party he sought to speak to, but his phone call was interrupted in order to bring him back to this courtroom.

He also has reviewed the probation report. He's indicated that the Probation Report contains several misstatements of fact, which might in some way color your Honor's attitude towards him, and possibly involve increase in his sentence for unwarranted reasons.

He states that the personal history is completely inaccurate. He states that -- also, that the circumstances of his January 19, '71 arrest

are inaccurately presented in the Probation Report, in the sense that he has persistently denied possession of the shotgun involved in the case, and he was convicted only after trial.

And the fact that his denial of those circumstances, and the fact that it was a trial, is in no way reflected in the Probation Report.

He does feel that some of the characterizations concerning him, specifically that he behaved in an anti-social way to impress his peers, presents him in an unfavorable light, and that he does feel, that as an example of the inaccuracies of the probation report, and while this might not be material to sentencing, it might be a reflection on his view of the inaccuracy, that they have ascribed the wrong number of children to him.

THE COURT: All right, first, let the record show that Mr. Chin has been in possession of the report for forty minutes. It's now eleven o'clock.

Why was the telephone call interrupted, any reason?

THE MARSHALL: Judge, he had been on the phone for approximately ten minutes, and then he started making threats against the Judge. He



referred to you --

THE DEFENDANT CHIN: Your Honor, I am speaking --

THE MARSHALL: --as Judge Mishler, that Jew bastard, and he said, "I want number one. No, change that, get number two; I don't care if he's at the UN. And get some people here. And I want to get that " -- he referred to you as "that Jew bastard Mishler."

THE COURT: I disregard that, because of the emotional situation we are in.

THE DEFENDANT CHIN: Oh, man, no.

THE COURT: As a matter of fact --

THE DEFENDANT CHIN: Your Honor --

THE COURT: (Continuing)--I would say that I have been called worse than that.

THE MARSHALL: He had over ten minutes on the phone then, Judge. That's why we stopped the phone call.

THE DEFENDANT CHIN: This person I was speaking to, is Jewish, your Honor, so I wouldn't make that statement. She wanted to know all aspects so she could get in contact with these people and return to my lawyers, so she wanted to know what



was happening.

She was also telling me about the making of certain threats when I was picked up.

THE COURT: That's quite immaterial..

I want to go over the report, and start with page.two.

MR. CHREIN: Might I make one further comment?

THE COURT: Yes?

MR. CHREIN: Miss Burns -- that's a lawyer associated with the Legal Aid Society. She's the author of the letter that your Honor received.

I would also add, to more or less corroborate what Mr. Chin said, that letter was written on March 24, and we received the sentence notice on Friday, and I know it was mailed out to Mr. Chin on Friday, and he probably was unaware of the sentence notice when he received the letter. In any event, Miss Burns said that Mr. Chin is in serious belief that his life in some way is threatened.

If this caused him a certain amount of distress, as it would you, as it would myself, I do feel that he is perhaps not sufficiently emotionally composed, because of those threats, to stand

sentence today.

THE COURT: No, I see nothing wrong. He's fully oriented. He's advanced all the legal arguments.

He made a motion withdrawing his plea.

THE DEFENDANT CHIN: You see, your Honor, if I don't have my lawyer --

THE COURT: Wait, now.

He's asked for an adjournment of sentence until Thursday. He's made a logical argument. He's in no greater distress than any defendant that has appeared before me for sentencing on an armed bank robbery.

Now, let's go over the -- let's take one thing at a time. Let's go over the pre-sentence report.

Let's start with page two.

Is there anything in there on page two?

THE DEFENDANT CHIN: May I ask one question to this Court: Am I being denied a chance to obtain a lawyer of my own right? I am not talking about legal assistance, but a lawyer, as I explained to this Court, ever since this incident went down that intensified the matter --



THE COURT: Which incident are you talking about?

THE DEFENDANT CHIN: The incident about trying to break out of West Street.

THE COURT: I told you, and I assure you, that this is not taken -- that is not a factor in the sentencing, and whether I sentence you today or Thursday, would matter not one whit.

MR. CHREIN: Your Honor, might I say -- I am sorry, might I say one thing further?

THE COURT: Now, look, we are going to do this orderly. Mr. Chin is going to have everything he wants to say, and then he's going to stop. You are going to have everything you want to say, and then you are going to stop. And then I am going to sentence.

This is not going to be a two day sentencing.

MR. CHREIN: No, your Honor.

THE COURT: This started at about ten o'clock.

MR. CHREIN: Your Honor, just one reflection, and I will say nothing more. The defendant has indicated that he wants a lawyer of his own choice.

THE COURT: I have already ruled on that.



He's had a lawyer of his own choice.

THE DEFENDANT CHIN: When?

THE COURT: For the pleading -- Not of his own choice, assigned counsel for the pleading, his original pleading for the trial, for his withdrawal of plea, and now at sentencing.

He's not going to delay the sentencing by the device of asking for counsel.

THE DEFENDANT CHIN: Well, this is --

THE COURT: He's going to be sentenced today.

s Now, Mr. Chin, say what you have to say. You talked about the errors in the Probation Report. Start at page two.

THE DEFENDANT CHIN: I am going to make one more statement for the record. Your Honor said that he wasn't interested in the affair that went down, but I also notice that you take a great concern in the safety of myself over at West Street, inasfar as custody.

You made this statement.

Number two, the minute that you say -- man, I told you the circumstances, I showed you the letter. There was no trick involved. You just refused, overlooked it.

I see no reason why I should say anything more.

THE COURT: All right, if you don't want to say anything more, then you said it.

Have you got anything further to say?

MR. CHREIN: Well, your Honor, I would just indicate that my reading of the Probation Report, indicates that Mr. Chin was not an organizer of this bank robbery.

THE COURT: What page is that on?

MR. CHREIN: I believe it states that he was a latecomer in the scheme.

THE COURT: What page is that on?

THE DEFENDANT CHIN: Also another thing they talked about --

THE COURT: Now, wait. Now, one at a time.

Mr. Chrein says he wants to talk.

MR. CHREIN: No, your Honor, if the defendant wants to talk, it's his right of allocution, not mine.

THE COURT: I know, but we have to have some order here. I gave him his right of allocution. He said he had nothing to say.

MR. CHREIN: No, it belongs to him.



THE DEFENDANT CHIN: I'd like to get a copy of this.

THE COURT: You point out the errors in the Probation Report, and I'll rule on them.

MR. CHREIN: I am not claiming error.

THE COURT: Mr. Chin, point them out.

THE DEFENDANT CHIN: You see, your Honor, to do this --

THE COURT: Instead of just talking, you said there was error. I want to know where the error is.

THE DEFENDANT CHIN: All right, I'll show you, like when they say --

THE COURT: What page is that on?

THE DEFENDANT CHIN: That's in my personal history.

THE COURT: You don't want to give me the page, you want me to find it?

MR. WOODFIELD: Personal history, on page six, your Honor.

THE DEFENDANT CHIN: People still going to have to come here, because they say one thing and --

THE COURT: Where is it, where is the error?

THE DEFENDANT CHIN: The whole thing is an



agglomeration of untrue allegations, anyway.

About my father --

THE COURT: You say that you weren't born in Brooklyn?

THE DEFENDANT CHIN: About my father is correct.

THE COURT: His father died when he was three years old?

THE DEFENDANT CHIN: This is correct. But then it goes on to say "the neighbors recall that at an early age, he was trying to impress his peers by acting in an anti-social way."

Even the papers on the 21 and 22, concerning myself, would state the complete opposite.

THE COURT: That has little effect, when I look at your record, from the age 13.

THE DEFENDANT CHIN: Talking about --

THE COURT: And that has nothing to do with the sentencing here. What you did at age 13 and what you did as a boy, and how your neighbors feel, matters little, when you are charged with armed robbery.

THE DEFENDANT CHIN: Also talking about my family, talking about --

THE COURT: What else?

THE DEFENDANT CHIN: About my mother is true.

THE COURT: Where? Give me the language.

THE DEFENDANT CHIN: They said Gladys.

I don't even know -- I don't know where they got me that from.

THE COURT: Oh, "Gladys died in 1973 at the age of 57."

THE DEFENDANT CHIN: That's correct. About marital status, that is untrue.

THE COURT: Wait now, wait, now. I don't know what you are referring to.

THE DEFENDANT CHIN: This is four, number four.

MR. WOODFIELD: Is that marital status at the bottom of page 7?

THE DEFENDANT CHIN: Yes.

THE COURT: "The defendant is single, but he has two out-of-wedlock sons, born to Katrina Harold. Miss Harold is aged twenty five, completed 11 years of education."

That, that's not going to affect the sentencing at all.

THE DEFENDANT CHIN: What about the relationship



THE COURT: I beg your pardon?

THE DEFENDANT CHIN: What about the relationship?

THE COURT: I wouldn't care at all.

THE DEFENDANT CHIN: So then this story, I rapped with two lawyers, since my call to that place.

THE COURT: Are you all through with the Probation Report? Are there any other errors in it?

THE MARSHAL: Stay here.

THE DEFENDANT CHIN: You can't force me to stay in the courtroom. Get your hands off me.

THE COURT: You remain here during the sentencing. Why do you want to leave? If you want to leave, you will ask to leave.

THE DEFENDANT CHIN: Why should I stay here? You deny me lawyers, you deny me everything in your power -- right?

THE COURT: Is there anything you want to say about the sentencing?

THE DEFENDANT CHIN: I want my lawyer.

THE COURT: Anything else?

THE DEFENDANT CHIN: I want the people who want to represent me to be down here.

THE COURT: Anything else?

THE DEFENDANT CHIN: Like I say before,  
I withdraw my plea.

THE COURT: Anything else? That was already  
denied. We had -- practically had a full trial on  
it. The plea was knowingly and voluntarily made.

Anything else?

THE DEFENDANT CHIN: That can be contested.

THE COURT: Anything else?

Let the record show that the defendant has  
turned his back on the Court.

Spencer Thomas Chin, on your plea of guilty --

MR. CHREIN: Your Honor, the Court  
indicated that it wished the citation of the page  
in the Probation Report, I referred to. I speak of  
the next to the last paragraph on page four, as far  
as the minimizing material.

THE COURT: I beg your pardon?

MR. CHREIN: I refer to the next to the last  
paragraph on page four, where it says "Agents suspect  
that Bennett was the most culpable of the robbers,  
and that Chin was a last minute pickup.

THE COURT: Yes.

MR. CHREIN: I also would call your Honor's ---



THE COURT: Well, that's favorable, you can't complain about that.

MR. CHREIN: Yes, I would ask the Court to consider that.

THE COURT: I certainly have.

MR. CHREIN: And the fact that he wasn't armed, and the fact that the agents don't suspect that he was involved in other robberies, which appears toward the end of the report.

THE COURT: I certainly have.

I might say this: I am bending backwards, I disregarded the defendant's activity at West Street, for the period March 21 to March 22, I disregarded his surly attitude in Court today, and I am not increasing the sentence I tentatively fixed for him.

On the other hand, I don't think anything that was said in Court today, gives me reason to reduce the sentence I tentatively fixed.

Spencer Thomas Chin, on your plea of guilty to count three of the indictment, I sentence you to the custody of the Attorney General of the United States, or his duly authorized representative, who shall choose the place of confinement, for a

term of fifteen years.

I might say that had I taken his activity at West Street, into consideration, I would have imposed the maximum.

I feel bound by the statement made by the United States Attorney. I think he's compromised the position of the Court, with reference to that activity.

I also was sorely tempted to increase this term, because of this witness' obvious contempt for the Court and its processes.

I should hope that, as I hope for every defendant, he sees the light. This is one of the more difficult cases. His sneering and leering of course, just confirms what I said.

Is there a motion?

MR. WOODFIELD: Yes, your Honor. At this time, the Government would move to dismiss counts one and two in 73 CR 779.

THE COURT: Motion granted.

MR. WOODFIELD: Thank you.

THE COURT: Oh, this defendant has moved to withdraw the plea.

Now, I don't normally give -- I am not



required to give -- advice under Rule 32(b), because there was no trial, but because the motion was made here, and because there is some difficulty in knowing who counsel is, you of course, have an obligation --

MR. CHREIN: I was going to request, your Honor, that a Notice of Appeal be filed by the Clerk of the Court in the defendant's name, in view of the fact that there might be Rule 11 problems in connection with the plea, as well as problems concerning --

THE COURT: Yes, yes.

MR. CHREIN: (Continuing) His motion to withdraw the plea today, which was denied.

THE COURT: And I should advise you, Mr. Chin-- I am sure you are fully advised -- that under the Rules of this Court, you have a right to appeal from any decision I have made. In my humble opinion, you have no right to appeal from the sentence, but you may very well have a right to appeal from the motion to deny your adjournment of sentencing, and the motion to deny -- the denial of your motion to withdraw the plea.

You have a right to appeal from those denials.

And the Government, of course, will pay for your appeal, because you are obviously indigent, and entitled to the benefits of the Criminal Justice Act.

And Mr. Chrein has indicated that he'd like me to direct the Clerk to appeal. In order to make certain, I will direct the Clerk to file a Notice of Appeal, appealing from the judgment and commitment and from the orders of denial of both motions, and every part thereof. Of course, without fee.

But you will continue, of course, Mr. --

MR. CHREIN: My Appeals Bureau will handle any aspects concerning this case, until and unless we are relieved by counsel of his own choice.

THE COURT: Now, there is no question of bail here, is there?

MR. CHREIN: Well, your Honor, I believe bail was set in the amount \$150,000 initially in this case.

THE COURT: Well, I am quite sure that you can't make \$150,000, but just to make sure, we will make it \$250,000 surety company bond.

MR. WOODFIELD: Thank you, your Honor.

THE DEFENDANT CHIN: Excuse me, surety?



That's--

MR. CHREIN: That's a surety bond. That's the whole thing.

THE COURT: From \$150,000 to \$250,000.

Anything further, Mr. Chrein?

MR. CHREIN: No, your Honor.

Your Honor, the defendant questions about a detainer. My review of the Probation Report shows no detainer.

THE COURT: I know of none, but you know that oftentimes detainers are filed or sometimes issued by other Courts, and not filed, so I can't assure him absolutely that there is no other -- that there is no detainer outstanding.

My report shows no detainer.

Have you returned the report to the Probation Department?

MR. CHREIN: Yes, I have, sir.

. . . . .

## AFFIDAVIT OF MAILING

STATE OF NEW YORK  
COUNTY OF KINGS  
EASTERN DISTRICT OF NEW YORK } ss

LYDIA FERNANDEZ

being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 5th day of August 1974 he served <sup>two copies</sup> ~~copy~~ of the within

Brief for the Appellee

by placing the same in a properly postpaid franked envelope addressed to:

Donald J. Farinacci, Esq.

95 Front Street

Hempstead, New York 11550

And deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, Washington Street, Borough of Brooklyn, County of Kings, City of New York.

*Lydia Fernandez*  
LYDIA FERNANDEZ

Sworn to before me this

9th day of August 1974

*Frances A. Grant*

FRANCES A. GRANT  
Notary Public, State of New York  
No. 41-4503731  
Qualified in Queens County  
Commission Expires March 30, 1975



